Note 1: This AD applies to each airplane identified in the preceding applicability revision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required with whichever of the following is applicable:

- For airplanes that do not have Piper Fuel Tank Wedge Kit, part number 599–367, incorporated in accordance with Piper Service Bulletin (SB) 932A, dated August 30, 1990: Within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished; or
- For airplanes that do have Piper Fuel Tank Wedge Kit, part number 599–367, incorporated in accordance with Piper SB 932A, dated August 30, 1990: Upon installation of a new fuel tank, unless already accomplished.

To prevent water in the fuel tanks, which could result in rough engine operation or complete loss of engine power, accomplish the following:

(a) For all of the affected model and serial number airplanes, install external fuel ramps in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Floats and Fuel Cells (FFC) Engineering Specification 2810–002, Revision A, dated March 21, 1995.

(b) For all of the affected Models PA23, PA23–150, and PA23–160 airplanes that do not have a dual fuel drain kit, part number (P/N) 765–363, installed in accordance with Piper SB 827A, dated November 4, 1988, incorporate, into the Owners Handbook and Pilots' Operating Handbook, paragraphs 1 through 5 of the *Aircraft Systems Operating Instructions* that are contained in Part I of Piper SB 827A, unless already accomplished (compliance with superseded AD 92–13–04).

Note 2: Paragraphs 6 and 7 of the Handling and Servicing instructions that are contained in Part I of Piper SB No. 827A, dated November 4, 1988, are covered by AD 88–21–07 R1.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office (ACO), Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Aircraft Certification Office.

(e) All persons affected by this directive may obtain copies of the Engineering Specification 2810–002, Revision A, dated March 21, 1995, upon request to Floats & Fuel Cells, 4010 Pilot Drive, suite 3, Memphis, Tennessee 38118. Piper SB No. 827A, dated November 4, 1988, may be obtained upon request from the Piper Aircraft Corporation, Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. These documents may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) This amendment supersedes AD 92–13–04, Amendment 39–8274.

Issued in Kansas City, Missouri, on September 13, 1995.

Gerald W. Pierce,

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 95–23215 Filed 9–18–95; 8:45 am]

**BILLING CODE 4910–13–U**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 70

**[AD–FRL–5298–1]**

## Clean Air Act Proposed Disapproval of Operating Permits Program; Commonwealth of Virginia

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed disapproval.

**SUMMARY:** EPA is proposing to disapprove the Commonwealth of Virginia's Operating Permits Program, which Virginia submitted in response to Federal requirements that States adopt programs providing for the issuance of operating permits to all major stationary sources and to certain other sources. EPA is proposing disapproval of Virginia's submittal because Virginia's program does not afford all persons who are entitled to seek judicial review of operating permits with the legal standing to obtain such review, does not assure that all sources required by the Clean Air Act (CAA) to obtain Title V permits will be required to obtain such permits, and does not contain an adequate provision for collection of Title V program fees.

**DATES:** Comments on this proposed action must be received in writing by October 19, 1995.

**ADDRESSES:** Comments should be submitted to Ray Chalmers, USEPA Region III; Air, Radiation, & Toxics Division; 841 Chestnut Building; Philadelphia, PA 19107.

Copies of the State's submittal and other supporting information used in developing the proposed disapproval are available for inspection during normal business hours at the following location: U.S. EPA Region III; Air, Radiation, & Toxics Division; 841 Chestnut Building; Philadelphia, PA 19107.

**FOR FURTHER INFORMATION CONTACT:** Ray Chalmers, 3AT23; U.S. EPA Region III; Air, Radiation, & Toxics Division; 841 Chestnut Building; Philadelphia, PA 19107. (215) 597–9844.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

Title V of the CAA, 42 U.S.C. §§ 7661–7611f, requires that States develop programs for issuing operating permits to all major stationary sources and to certain other sources, that they submit those programs to EPA by November 15, 1993, and that EPA approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the CAA and regulations promulgated at 40 Code of Federal Regulations (CFR) Part 70. The regulations promulgated at 40 CFR Part 70 define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which the EPA will approve or disapprove and oversee implementation of State operating permits programs (see 57 FR 32250 (July 21, 1992)). Where a program substantially, but not fully, meets the requirements of section 502 of the CAA or of Part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

Due in part to pending litigation over several aspects of the Part 70 rule promulgated on July 21, 1992, Part 70 is in the process of being revised. When the final revisions to Part 70 are promulgated, the requirements of the revised Part 70 will define EPA's criteria for the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which EPA will review State operating permits program submittals. Until the date on which the revisions to Part 70 are promulgated, the currently effective July 21, 1992 version of Part 70 shall be used as the basis for EPA review.

Virginia submitted a Title V program to EPA on November 12, 1993. The submittal included regulations, an Attorney General's opinion, a program description, permitting program documentation, and other required elements. On January 14, 1994, Virginia submitted a supplemental letter pertaining to enhanced monitoring. In a Federal Register notice published December 5, 1994 (59 Fed. Reg. 62324), EPA disapproved this program.[1] On January 9, 1995, Virginia submitted revised regulations and a revised Attorney General's opinion as amendments to its original program, and asked that EPA approve the revised program. On January 17, 1995, Virginia submitted an additional copy of the revised regulations (the version published in the Virginia Register). On April 18, 1995, EPA found Virginia's January 9, 1995 submittal to be administratively complete, pursuant to 40 CFR 70.4(e)(1). Finally, on May 17, 1995, Virginia again amended its program by submitting revised statutory language and an amended Attorney General's opinion.

The analysis contained in this document focuses on the major corrections required in Virginia's operating permit program submittals to enable Virginia's program to meet the minimum requirements of 40 CFR Part 70 and the CAA. The full program submittal, the Technical Support Document (TSD), providing additional analysis of Virginia's submittal, and other relevant materials providing more detailed information are available as part of the public docket.

## II. Analysis of State Submittal

### *A. Statutes, Regulations and Program Implementation*

Virginia's operating program submittal does not substantially meet the requirements of the CAA and of the implementing regulations at 40 CFR Part 70 because it: (1) Does not adequately afford persons the opportunity to seek judicial review of final permit decisions; (2) does not assure that all sources required by the CAA to obtain Title V permits will be required to obtain such permits; and (3) does not contain an adequate provision for collection of Title V program fees. These issues are discussed below, and in the TSD. In addition, this notice and the TSD specify other deficiencies which must be corrected before EPA can grant full approval to Virginia's operating permits program.

[1] The Commonwealth of Virginia filed an appeal of this rulemaking in the United States Court of Appeals for the Fourth Circuit (Case No. 95–1052).

#### 1. Standing for Judicial Review

EPA is proposing to disapprove Virginia's Title V program because it does not adequately provide interested parties with adequate standing to obtain judicial review of final Title V permit decisions. As described in the December 5, 1994 final disapproval notice, EPA interprets section 502(b)(6) of the CAA and 40 CFR 70.4(b)(3)(x) as requiring that approvable Title V permit programs provide any party who participated in the public comment process on a permit action and who meets the threshold standing requirements of Article III of the U.S. Constitution with the opportunity to obtain judicial review of an operating permit in State court. (See 59 FR 62325). The Commonwealth's January 9, 1995, submittal did not correct the previously identified deficiency in Virginia's standing provisions. In particular, Virginia did not amend the standing provisions of Section 10.1–1318(B) of the Code of Virginia. Those provisions continue to extend the right to seek judicial review only to persons who have suffered an ''actual, threatened, or imminent injury * * *'' where ''such injury is an invasion of an immediate, legally protected, pecuniary and substantial interest which is concrete and particularized * * *'' Virginia's statute does not enable a party who meets the minimum threshold standing requirements of Article III of the U.S. Constitution to obtain access to Virginia's court system and therefore it fails to meet the minimum requirements for providing an opportunity for judicial review as required by section 502(b)(6) of the CAA and 40 CFR 70.4(b)(3)(x).

The Commonwealth's Attorney General has questioned the validity of EPA's interpretation of section 502(b)(6) of the CAA and, if that interpretation is valid, of the constitutionality of the CAA. EPA believes that its interpretation of section 502(b)(6) of the CAA is reasonable and is supported by the language of the CAA, its legislative history, and the goals Congress sought to achieve under Title V of the CAA. In addition, EPA believes that Title V of CAA and its related sanctions provisions do not violate the U.S. Constitution. (See 59 FR 62325–62327).

EPA must disapprove Virginia's program and cannot merely grant it interim approval on this issue because this deficiency is so significant that it prevents the entire program from substantially meeting the requirements of 40 CFR Part 70. If Virginia is permitted to narrowly preclude public commenters from exercising judicial review rights, one of the chief incentives for permit decision makers to fully consider public comments would be significantly reduced and the public comments process would thereby be rendered less meaningful. The guiding principle that EPA considers in all evaluations of approvability of interim programs is whether the proposed program can ensure the issuance of good permits. Only after a permit program is found to substantially meet the requirements of Part 70 can the criteria in 40 CFR § 70.4(d)(3) be applied to determine if the program is eligible for interim approval.

EPA cannot approve Virginia's operating permit program until Virginia amends *Va. Code* § 10.1–1318(B) to correct this deficiency.

#### 2. Applicability Under the Operating Permits Program

EPA is also proposing to disapprove Virginia's submittal because it does not ensure the applicability of the Title V operating permit program to all sources subject to the program under 40 CFR 70.3. Virginia's regulations provide that the operating permit program applies to sources subject to certain listed air pollution control requirements. (See § 120–08–0501 and § 120–08–0601.) In these applicability sections the Commonwealth should have listed all the CAA requirements which trigger Title V applicability, as they are set forth at 40 CFR 70.3. Instead, Virginia lists, in several cases, its own air pollution control regulations, in which Virginia incorporates federal CAA § 111 and § 112 requirements. Virginia states in Rule 8–5, § 120–08–0501, and in Rule 8–6, § 120–08–0601, that sources are subject to its operating permits rule if they are subject to Virginia's regulatory provisions of Parts IV, V and VI as adopted pursuant to sections 111 and 112 of the CAA. To meet the requirements of 40 CFR 70.3, Virginia must revise § 120–08–0501 and § 120–08–0601 to state that sources are subject to the operating permits rule if they are subject to a standard, limitation or other requirement under sections 111 or 112 of the CAA.

EPA cannot approve Virginia's operating permit program until Virginia corrects the deficiencies discussed above.

#### 3. Permit Fee Demonstration

EPA is also proposing to disapprove Virginia's submittal because it does not contain an adequate permit fee demonstration. Virginia's Rule 8–6, entitled ''Permit Program Fees for Stationary Sources,'' includes a formula to be used for calculating permit fees. Under this formula a base year fee

amount is to be increased each year by the amount of inflation as measured by the consumer price index for all urban consumers. This part of the formula meets the permit fee requirements of 40 CFR § 70.9.

However, in the formula Virginia defines the base year amount not as $25, which is the minimum required for EPA to presume a State fee to be adequate, as specified under 40 CFR § 70.9, but rather as ''the base year amount specified in § 10.1–1322(B) of the Virginia Air Pollution Control Law, expressed in dollars per ton.'' Section 10.1–1322(B) does not define a certain base year fee, but states only that ''The annual permit program fees shall not exceed a base year amount of twenty-five dollars per ton using 1990 as the base year, and shall be adjusted annually by the Consumer Price Index as described in § 502 of the federal Clean Air Act.'' For Virginia's program to be approvable, the fee assessment formula in Virginia Rule 8–6 must be revised to specify a base year fee amount of $25 per ton, with a base year of 1989 adjusted for inflation, as provided for under 40 CFR § 70.9. Also, § 10.1–1322(B) should be changed to specify a base year of 1989.

Virginia Rule 8–6 also includes a provision, in §§ 120–08–0604.D. and E., which allows Virginia to assess a fee of less than $25 per ton (1989 dollars) adjusted for inflation, if Virginia determines that it would collect more money than required to fund its Title V program if it assessed the full $25 per ton fee (1989 dollars), adjusted for inflation. If Virginia chooses in the future to collect a fee of less than $25 (1989 dollars), adjusted for inflation, its fee assessment would no longer meet the requirement for presumed adequacy under 40 CFR § 70.9. Accordingly, Virginia would trigger the requirements under 40 CFR § 70.9(b)(5) that it provide EPA with a detailed accounting that its fee schedule meets the requirements of 40 CFR § 70.9(b)(1).

Before the Commonwealth assesses a fee lower than the presumptive minimum of § 25 per ton (1989 dollars), adjusted for inflation, it must obtain EPA approval of such a fee. EPA would approve such a fee if Virginia submitted a detailed accounting showing that the fee would result in the collection of sufficient funds to run a fully adequate Title V program. This requirement for EPA approval of any fee lower than the presumptive minimum is consistent with the requirements of 40 CFR § 70.9, and is implied by § 120–08–0604.D. which states that ''Any adjustments made to the annual permit program fee shall be made within the constraints of 40 CFR § 70.9.''

4. Insignificant Activities

Section 70.4(b)(2) requires States to include in their operating programs any criteria used to determine insignificant activities or emission levels for the purposes of determining complete applications. Section 70.5(c) provides that an application for a Part 70 permit may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate appropriate fee amounts. Section 70.5(c) further states that EPA may approve, as part of a State program, a list of insignificant activities and emissions levels which need not be included in permit applications. Under Part 70, a State may approve as part of that State's program any activity or emission level that the State wishes to consider insignificant. Part 70, however, does not establish specific emission levels for insignificant activities, relying instead on a case-by-case determination of appropriate levels based on the particular circumstances of the Part 70 program under review.

In Appendix W of Rules 8–5 and 8–6 Virginia defines various specified types of emission units as insignificant for purposes of Title V permitting, and states that these units are not required to be identified in Title V applications. The Appendix also states that other unspecified types of units can be considered insignificant if their emissions or their size or production rate are below certain levels. These units must be listed in Title V applications, and their emissions, size, or production rate must be given, whichever is relevant, but no additional information must be supplied regarding them.

EPA has several concerns regarding Virginia's classifications of insignificant sources. One overall concern is that under Virginia Rule 8–5 and Appendix W the determination of whether or not a source is subject to the operating permit program can be done without taking into account emissions from units considered to be insignificant. If the total emissions from units subject to Title V requirements were just below the level which would trigger Title V program applicability, failure to take into account additional emissions from units which are exempt could result in a source avoiding Title V requirements when it should be subject to those requirements. EPA recommends that Virginia correct this deficiency by modifying the statements found in § 120–08–505D(1)(a)(2) and in Appendix W(I)(A)(4), which require that ''the emissions from any emissions unit shall be included in the permit application if the omission of those emission units from the application would interfere with the determination or imposition of any applicable requirement or the calculation of permit fees.'' The last portion of this statement should be modified to state ''if the omission of those emission units would interfere with the determination of Title V applicability, the determination or imposition of an applicable requirement, or the calculation of permit fees.''

EPA is also concerned that when Virginia defined emissions units as insignificant based on their emissions levels, Virginia used emissions levels which are too high. Specifically, EPA is concerned that Virginia defined as insignificant all emissions units with uncontrolled emissions of less than 10 tons per year of nitrogen dioxide, sulfur dioxide, and total suspended particulates or particulate matter (PM10), less than seven tons per year of volatile organic compounds, and less than 100 tons per year of carbon monoxide. Virginia defines ''uncontrolled emissions'' as emissions from a source when operating at maximum capacity without air pollution control equipment. Insignificant activity thresholds that are considered to be ''sound'' by EPA would fall in the range of 1 to 2 tons per year for criteria pollutants. EPA is also concerned that Virginia defined as insignificant all other pollutant emission sources (many of them hazardous emission sources) with emissions less than the section 112(g) de minimis levels set forth at 40 CFR § 63.44 or the accidental release threshold levels found at 40 CFR § 68.130. These levels are appropriate in many cases, but are too high in others. Accordingly, EPA believes that Virginia should modify this provision to indicate that sources emitting other air pollutants are considered insignificant if their emissions are below the lesser of the § 112(g) threshold levels set forth at 40 CFR § 63.44, the accidental release thresholds set forth at 40 CFR § 68.130, or 1000 pounds per year. EPA believes that the above criteria and other pollutant emission levels are sufficiently below the applicability thresholds for many applicable requirements to assure that no unit potentially subject to an applicable requirement would be omitted from a Title V application.

EPA is concerned that Virginia did not provide EPA with sufficient information to properly evaluate whether or not all of the activities

which Virginia included on its list of insignificant activities are appropriate. Of key importance to EPA in reviewing such lists is that no source subject to an applicable federal requirement should be included on the list, pursuant to 40 CFR § 70.5. Virginia did not provide a demonstration that the activities it listed are not likely to be subject to such requirements. Also important in reviewing such lists is that the emissions from the activities listed be truly insignificant, and Virginia did not provide EPA with information on the likely emissions of the activities listed. However, it is clear that Virginia has incorrectly listed as insignificant both ''comfort air conditioning'' and ''refrigeration systems,'' which are subject to stratospheric ozone protection requirements established by Title VI of the CAA. Virginia should remove both comfort air conditioning and refrigeration systems from the insignificant activities list.

EPA cannot fully approve Virginia's operating permit program until Virginia corrects the deficiencies discussed above.

5. Variance Provision

While not a disapproval issue, it should be noted that Virginia has the authority to issue a variance from requirements imposed by Virginia law. The variance provision at *Va. Code* § 10.1–1307.C. empowers the Air Pollution Control Board, after a public hearing, to grant a local variance from any regulation adopted by the board. EPA regards this provision as wholly external to the program submitted for approval under Part 70, and consequently is proposing to take no action on this provision of Virginia law. EPA has no authority to approve provisions of State law, such as the variance provision referred to, which are inconsistent with the CAA. EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a federally enforceable permit, except where such relief is consistent with the applicable requirements of the CAA and is granted through procedures allowed by Part 70. EPA reserves the right to enforce the terms of the permit where the permitting authority purports to grant relief from the duty to comply with a permit in a manner inconsistent with the CAA and Part 70 procedures.

*B. Provisions Implementing Other CAA Requirements*

1. Authority and Commitments for Section 112 Implementation

Virginia requested that EPA grant Virginia ''delegation of authority upon approval of the operating permit program for all Section 112 programs except Section 112(r), prevention of accidental releases.'' Because EPA is disapproving Virginia's Title V submittal, Virginia's request for delegation has not been triggered.

Virginia demonstrated that it has in Va. Code § 10.1–1322.A. and Rule 8–5 the broad legal authority to incorporate into permits and to enforce most applicable CAA section 112 requirements. However, Virginia also indicated that it may require additional authority to conduct certain specific section 112 activities. Virginia supplemented its broad legal authority with a commitment to ''develop the state regulatory provisions as necessary to carry out these programs and the responsibilities under the delegation after approval of the operating permit program and EPA has issued the prerequisite guidance for development of these title III programs.'' Also, Virginia has the authority under § 120–08–0505.K. to require that an applicant state that the source has complied with CAA § 112(r) or state in the compliance plan that the source intends to comply and has set a schedule to do so.

EPA had until recently interpreted the CAA as requiring sources to comply with section 112(g) beginning on the date of approval of a Title V program regardless of whether or not EPA had completed its section 112(g) rulemaking. EPA has since revised this interpretation of the CAA as described in a February 14, 1995 Federal Register notice (see 60 FR 83333). The revised interpretation postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing that provision. The rationale for the revised interpretation is set forth in detail in the February 14, 1995 interpretive notice.

The section 112(g) interpretive notice explains that EPA is still considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the federal rule to allow States time to adopt rules implementing the federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), Virginia would be required, if it were delegated authority to implement section 112(g), to be able to implement section 112(g) during the transition period between promulgation of the federal section 112(g) rule and adoption of implementing Virginia regulations.

2. Acid Rain Provisions

Virginia's program does not contain all provisions required relating to acid rain sources, but Virginia has committed to submit the required provisions shortly, and EPA find Virginia's commitment acceptable. Virginia's program properly requires ''affected sources'' to obtain operating permits, and Virginia defines an ''affected source'' as a source containing one or more ''affected units,'' which are themselves defined as ''a unit subject to any acid rain emissions reduction requirement or acid rain emissions limitation under 40 CFR Parts 72, 73, 75, 76, 77, or 78.'' However, Virginia has not defined as an ''applicable requirement'' any of these acid rain emissions reduction requirements or limitations. Therefore, Virginia's operating permits would not be required to include any of these requirements.

Virginia is aware of this deficiency and has committed to correct it. In Virginia's operating permits program submittal of January 9, 1995, Virginia committed to adopting an acid rain regulation by the latter half of 1995. Virginia stated that under this regulation it would issue acid rain sources operating permits which would include all requirements of the acid rain program. In a statement included in that submittal, Virginia's Attorney General also committed to provide EPA, when Virginia submits its acid rain regulation, with the required legal opinion regarding Virginia's legal authority to carry out the acid rain portion of the operating permits program.

III. Proposed Action and Implications

The EPA is proposing to disapprove the operating permits program contained in submittals from Virginia dated November 12, 1993, January 14, 1994, January 9, 1995, January 17, 1995, and May 17, 1995. If promulgated, this disapproval would constitute a disapproval under section 502(d) of the CAA (see generally 57 FR 32253–54). As provided under section 502(d)(1) of the CAA, Virginia would have up to 180 days from the date of EPA's notification of disapproval to the Governor to revise and resubmit the program.

If EPA finalizes this proposed disapproval, Virginia may become subject to sanctions under the CAA. Pursuant to section 502(d)(2)(A) of the CAA, EPA may, at its discretion, apply any of the sanctions in section 179(b) at any time following the effective date of

a final disapproval. The available sanctions include a prohibition on the approval by the Secretary of Transportation of certain highway projects or the awarding of certain federal highway funding, and a requirement that new or modified stationary sources or emissions units for which a permit is required under Part D of Title I of the CAA achieve an emissions reductions-to-increases ratio of at least 2-to-1. In addition, EPA is required by section 502(d)(2)(B) of the CAA to apply one of the sanctions in section 179(b), as selected by the Administrator, on the date 18 months after the effective date of a final disapproval, unless prior to that date Virginia has submitted a revised operating permits program and EPA has determined that it corrects the deficiencies that prompted the final disapproval. Moreover, if the Administrator finds a lack of good faith on the part of Virginia, both sanctions shall apply after the expiration of the 18-month period until the Administrator determines that Virginia has come into compliance. In all cases, if, six months after EPA applies the first sanction, Virginia has not submitted a revised program that EPA has determined corrects the disapproved program's deficiencies, a second sanction is required. Finally, if EPA has not granted full approval to Virginia's program by November 15, 1995, and Virginia's program at that point does not have interim approval status, EPA must promulgate, administer and enforce a Federal permits program for Virginia on that date.

EPA first disapproved Virginia's operating permits program in a Federal Register notice published on December 5, 1994, which became effective on January 5, 1995. As a result, EPA's authority to apply discretionary sanctions to Virginia arose on January 5, 1995, and the 18-month period before which EPA is required to apply sanctions also began on that date.

Consequently, following today's proposed disapproval EPA continues to have the authority to apply discretionary sanctions to Virginia and will be required to apply sanctions on July 5, 1996, unless by that date EPA determines Virginia has corrected each of the deficiencies that prompted EPA's original disapproval. Moreover, if today's proposed disapproval is finalized, EPA would be required to apply sanctions 18 months after the effective date of such action, unless by that date EPA determines Virginia has corrected each of the deficiencies that prompted EPA's disapproval and that were not the subject of the original final disapproval action.

## IV. Proposed Action

EPA is proposing to disapprove the submittals made on January 9, 1995 and May 17, 1995 by the Commonwealth of Virginia to satisfy the requirements for the operating permits program required by Title V of the Clean Air Act for the reasons outlined in this notice.

## V. Administrative Requirements

### *A. Request for Public Comments*

The EPA is requesting comments on all aspects of this proposed disapproval. Copies of the State's submittal and other information relied upon for the proposed disapproval are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed disapproval. The principal purposes of the docket are: (1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the disapproval process; and (2) to serve as the record in case of judicial review. The EPA will consider any comments received by October 19, 1995.

### *B. Executive Order 12866*

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

### *C. Regulatory Flexibility Act*

The EPA's actions under section 502 of the CAA do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR Part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

### *D. Federal Mandates*

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final action that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must consider the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. EPA has determined that this proposed disapproval action of Virginia's Title V Operating Permits Program does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action disapproves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

## List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, and Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 8, 1995.

W. Michael McCabe,

*Regional Administrator, Region III.*

[FR Doc. 95–23204 Filed 9–18–95; 8:45 am]

BILLING CODE 6560–50–P

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## 40 CFR Part 81

**[AD–FRL–5297–9]**

## Clean Air Act Reclassification; Pennsylvania—Liberty Borough Nonattainment Area; PM–10

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to find that the Liberty Borough, Pennsylvania nonattainment area has not attained national ambient air quality standards (NAAQS) for particulate matter of nominal aerodynamic diameter smaller than 10 micrometers (PM–10) by the Clean Air Act (the Act) mandated attainment date for moderate nonattainment areas. The Act established an attainment date of no later than December 31, 1994 for areas classified as moderate nonattainment areas. This proposed finding is based on monitored air quality data for the PM–10 NAAQS during the years 1992–94. EPA is soliciting public comment on all relevant matters associated with this proposed action, including comment as to whether there are any mitigating facts or extenuating circumstances that it should consider in its review of the monitoring data used to propose to find that the area has not achieved the